



W.P(MD)No.6362 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2023

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.6362 of 2017

S.Kalidas

Petitioner

Vs.

The District Registrar,
District Registrar Office,
Tenkasi, Tirunelveli District.

Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondent herein to pass orders on the petitioner's representation dated 16.02.2017 by holding necessary enquiry in the light of Circular No.67 dated 03.11.2011 issued by the Inspector General of Registration by providing opportunity of hearing to the parties concerned and pass such suitable order.

For Petitioner :Mr.E.V.N.Siva
For Respondent :Mr.P.T.Thiraviam
Government Advocate

ORDER

The case of the petitioner is that the property in 278/1 is



W.P(MD)No.6362 of 2017

WEB COPY

an undivided family property belongs to the petitioner, his brother and three other sisters. However, after the demise of the petitioner's brother, his wife without effecting partition of the property settled 1/3rd of undivided share in favour of her daughters and they in turn sold the entire property to one E.Iyyappan, vide Document No. 1251/2016, dated 21.07.2016 on the file of the Sub Registrar, Panpozhi. Hence, in order to cancel the above document, the petitioner has submitted a representation on 16.02.2017. However, no action has been taken by the respondents. Hence, the petitioner is before this Court.

2.Mr.P.T.Thiraviam, learned Government Advocate, who takes notice for the respondent submits that the petitioner has approached this Court to direct the registering authority to consider the application of this petitioner filed under Section 77A of the Registration Act,1908 for cancelling the document, which was registered in the year 2016.



W.P(MD)No.6362 of 2017

3.The Hon'ble Supreme Court in ***Satya Pal Anand v.***

State of M.P., [(2016) 10 SCC 767] has held that that the power to cancel the registration is a substantive matter and in the absence of any express provision on that behalf, it is not open to assume that the Registering Officer would be competent to cancel the registration of the documents in question. Therefore, for cancellation of registered documents, the State of Tamil Nadu brought an amendment to the Registration Act, vide the Registration (Tamil Nadu Second Amendment) Act, 2021. By this amendment Act, Sections 22B, 77A, 77B, 81A and 81B were inserted in the Registration Act. Section 77A provides the power to the Registrar to cancel registered documents, if it is found to be in contravention of sections 22A and 22B.

4.Whereas, this Court in ***S.M. Hajabakruthen Vs. The Inspector General of Registration [W.P.(MD) Nos. 14546 of 2022 batch, dated 27.03.2023]***, in view of the conflicting views taken by two different benches of this Court regarding the applicability of



W.P(MD)No.6362 of 2017

Section 77A, has referred various issues for consideration by a Larger Bench of this Court. The relevant portion of the reference order is extracted as follows-

“20. In view of the reasonings of the Full Bench and in view of the conflicting views of the two learned Single Judges the following issues are referred for due consideration by a Larger Bench of this Court.

i) whether the recitals in a document presented for registration, can be examined to determine that such document was fraudulently executed or registered;

ii) whether a document in which the recitals alone are questioned can be considered only as voidable which would normally necessitate the filing of the suit to set aside the particular document or whether even those documents can be cancelled by the Sub Registrar under Section 77A of the Registration Act;

iii) whether exercise of power under Section 77A must be restricted to registration of documents in contravention to Section 22-A or 22-B of Registration Act, 1908 alone?

iv) whether the exercise of such power under



W.P(MD)No.6362 of 2017

WEB COPY

Section 77A of the Registration Act can be prospective in nature or retrospective in nature?

21. To determine these issues, the Registry may place all the writ petitions before the Hon'ble Administrative Judge for constitution of a Larger Bench to examine the issues in detail.

22. Till a decision is rendered by the Larger Bench, let no further action be taken by any of the Sub Registrars, who may await further orders of the Larger Bench.”

5.By referring to the above order, this Court in ***A.Shanthi v. The District Registrar [WP.No.18814 of 2023, dated 27.06.2023]*** has reiterated that the District Registrars across Tamil Nadu shall not take any action on an application under Section 77A of the Registration Act, till the reference is answered by the Larger Bench. The relevant portion is extracted as follows:-

“4.In the light of the above order, there is no scope for considering the representation made by the petitioner



W.P(MD)No.6362 of 2017

WEB COPY

at present and the petitioner has to necessarily await for the final orders to be passed by the Larger Bench on the issue. Hence, this writ petition is closed for the present.

5.It is brought to the notice of this Court that in spite of the above order passed by this Court, the District Registrars are entertaining the applications under Section 77A of the Registration Act and even orders are passed. It is not known as to whether this order was circulated to all the District Registrars in State of Tamil Nadu. In view of the above order, this Court once again reiterates that the District Registrars across Tamil Nadu shall not take any further action on the application submitted under Section 77A of the Registration Act, till a final decision is rendered by the Larger Bench. The Inspector General of Registration is directed to issue a Circular in this regard to all the District Registrars across the State of Tamil Nadu immediately”

6.In view of the above decisions, this Court disposes of this writ petition with liberty to the petitioner to approach the competent civil Court and if any civil suit is filed, the same shall be



W.P(MD)No.6362 of 2017

entertained by the civil Court by excluding the period for which this writ petition was pending before this Court for the purpose of calculating the limitation period. The writ petitioner is also at liberty to invoke Section 77A of the Act upon the outcome of the reference made. There shall be no order as to costs.

07.06.2023

NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.
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To

The District Registrar,
District Registrar Office,
Tenkasi, Tirunelveli District.



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W.P(MD)No.6362 of 2017

B.PUGALENDHI, J

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